

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 659

Limitations on Claims for Refund of Corporate Income Tax

**SPONSOR(S):** Domino

**TIED BILLS:**

**IDEN./SIM. BILLS:** SB 1300

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Economic Development, Trade &amp; Banking Committee</u>	<u>15 Y, 0 N</u>	<u>Sheheane</u>	<u>Carlson</u>
2) <u>Finance &amp; Tax Committee</u>	<u>                    </u>	<u>                    </u>	<u>                    </u>
3) <u>Commerce Council</u>	<u>                    </u>	<u>                    </u>	<u>                    </u>
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**SUMMARY ANALYSIS**

Section 220.727, F.S., provides the rule for determining when payments of estimated income tax are deemed to be made for purposes of the statute of limitations governing refunds. Currently, payments of estimated tax are deemed paid either at the time the taxpayer files the return or at the time the return is required to be filed, determined without regard to any extension thereof, whichever occurs first.

The bill provides that payments of estimated tax are deemed paid either at the time the taxpayer files the return or at the time the return is required to be filed, whichever occurs later.

This act will take effect July 1, 2005.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

The bill does not appear to implicate any of the House Principles.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Current Situation**

Section 220.727(1), F.S., provides the rule for determining when payments of estimated corporate income tax are deemed to be made for purposes of the statute of limitations governing refunds. Although the actual payments of estimated tax are made earlier, for purposes of the refund statute they are deemed to be paid:

- on the date the return is filed by the taxpayer; or
- on the original due date of the return, whichever is earlier.

Section 215.26, F.S., provides that the CFO may refund any moneys paid to the State Treasury which constitute: an overpayment of any tax, license, or account due; a payment where no tax license or account is due, and; any payment made to the State Treasury in error. An application for refunds must be filed with the CFO within three years after the right to the refund has accrued or else the right is barred.<sup>1</sup>

Therefore, the three-year statute of limitations for obtaining a refund of estimated tax will begin to run no later than the original due date of the return.

##### **Proposed Changes**

The bill amends s. 220.727(1), F.S., to provide that payments of estimated tax are deemed to have been paid:

- on the date the return is filed by the taxpayer; or
- on the due date of the return, whichever occurs later.

The three-year statute of limitations for obtaining a refund of estimated tax will not start to run until such time as the taxpayer files a return (if the return is filed after the due date). The bill changes the date estimated taxes are deemed to be paid, thus changing the statute of limitations for refunds of most corporate income taxes.

#### C. SECTION DIRECTORY:

Section 1: Amends s. 220.727, F.S., relating to determining when payments of estimated corporate income tax are deemed to be made for purposes of the statute of limitations governing refunds.

Section 2: This act shall take effect July 1, 2005.

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<sup>1</sup> See s. 215.26(2)

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require a municipality or county to expend funds or to take any action requiring the expenditure of funds. The bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate. The bill does not reduce the percentage of state tax shared with municipalities or counties.

2. Other:

None.

### B. RULE-MAKING AUTHORITY:

The bill does not authorize or require any rulemaking authority.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

The Department of Revenue has provided the following comments:

The bill provides an effective date of July 1, 2005, but does not specify the tax years to which it applies.

The bill creates an unlimited statute of limitations for filing a claim for refund under s. 215.26(2), F.S. because the three-year statute of limitations for a refund of estimated corporate income taxes will not start to run until the return is filed. According to the department, this will limit the incentive for a

taxpayer to file the return, and prevent the department from having a return which it may audit. If there is no underpayment of tax, the maximum penalty for failure to file is \$300.

Another concern is that it is very difficult and costly to trace estimated corporate income tax payments over a long period of time. According to the department, it is quite common for taxpayers to apply estimated tax payments to tax years other than the tax year for which payments were made and for taxpayers to transfer estimated tax payments from one entity to another.

#### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

None.